

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 36001 of 2005(J)

PETITIONER:

**CAPT.A.A.KUTTY, AGED 60 YEARS,
S/O. LATE ABDUL RAZAK, SECURITY OFFICER (RETIRED)
CENTRAL BANK OF INDIA, REGIONAL OFFICE, METRO
PALACE, ERNAKULAM, KOCHI-18), RESIDING AT
FLAT NO.4-A, STAR HOMES, CHERUPARAMBATH ROAD,
KADAVANTHRA, KOCHI-682 020.**

BY ADV. SRI.TPM.IBRAHIM KHAN

RESPONDENTS:

- 1. THE CENTRAL BANK OF INDIA,
REPRESENTED BY ITS CHAIRPERSON & MANAGING
DIRECTOR, CHANDER MUKHI, NARIMAN POINT,
MUMBAI-400 021.**
- 2. THE GENERAL MANAGER (PERSONNEL,
CENTRAL BANK OF INDIA, CHANDER MUKHI,
NARIMAN POINT, MUMBAI-400 021.**
- 3. THE REGIONAL MANAGER, CENTRAL BANK
OF INDIA, REGIONAL OFFICE, 1ST FLOOR,
METRO PALACE, ERNAKULAM NORTH,
KOCHI-682 018.**

**BY ADV. SRI.M.P.RAMACHANDRAN NAIR (SR.)
SRI.DEVAN RAMACHANDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 36001/2005 J

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER OF APPOINTMENT NO. ORDER OF APPOINTMENT NO. CO. PRS.RES. ASO, 87:222 DT. 31/1/87 BY THE R2.

EXT.P2. COPY OF THE LETTER NO. CO PRS. POL 87:484 DT. 16/09/87 BY THE R3.

EXT.P3. COPY OF THE CIRCULAR NO. CO.PRS.PO. 87.484 DT. 16/09/87 BY THE R3 REVISING THE FIXATION OF PAY OF AN EX.SERVICE MEMN REEMPLOYED IN THE BAK IK OFFICER CADRE IN TERIMS OF CENTRAL OFFICE ON THE SALARY AS RS. 1,895/-

EXT.P4. COPY OF THE LETTER DT. 30/4/05 BY THE RESPONDENT.

EXT.P5. COPY OF THE REPRESENTATION DT. 8/6/05 BY THE PETITIONER BEFORE THE RESPONDENTS 1 AND 3

EXT.P6. COPY OF THE LETTER NO. CRO.HRD.2005-06/440 DTD. 1/08/05 BY THE R3 TO THE PETITIONER.

EXT.P7. COPY OF THE PAY SLIP BY THE R3 FOR THE MONTH OF APRIL, 2005 TO THE PETITIONER.

EXT.P8. COPY OF THE LETTER NO. TRO.PRS.88:438 DT. 4/2/88 BY THE R3 TO THE ZONAL OFFICE AT CHENNAI.

EXT.P9. COPY OF THE REPRESENTATION DT. 4/08/2005 BY THE PETITIONER BEFORE THE R3 WITH COPY TO ALL OTHER RESPONDENTS.

EXT.P10. COPY OF THE LETTER NO. 108449/52/HQ DT. 18/09/82 BY THE MAJOR, CENTRAL ORDANCE DEPT, CHNEOKI.

EXT.P11. COPY OF THE LETTER NO. 38176/967/MS7C DT. 23/08/82 BY THE MILITARY SECRETARY, MILITARY SECRETARY'S BRANCH ARMY HEADQUARTERS, NEW DELHI-II.

EXT.P12. COPY OF THE RECORD OF THE SERVICE OFFICERS WITH PERSONAL NU. I.C. 25356.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C).36001 of 2005 J

Dated this the 5th day of July, 2007.

JUDGMENT

The petitioner is a retired Security Officer of the first respondent bank. After 11 years' Army Service, the petitioner joined the service of the bank. He retired from service in 2005. At the time of settlement of his terminal benefits, the respondent took the stand that his pay was fixed wrongly at the time of his initial entry in service and he has drawn an excess amount of Rs.1,62,042.95. Ext.P6 is the communication containing the stand of the respondents. While releasing the provident fund amount, the said amount was withheld. So, this writ petition is filed praying to quash Ext.P6 and to release the said amount with 12% interest from 30.4.2005.

2. The petitioner points out that Ext.P2 rules govern fixation of pay of Army Officers on their employment under the bank. When there was some doubt regarding the fixation of pay, the same was clarified by Ext.P8 by the competent authority of the bank. So, the pay was rightly fixed. Further, the pay fixation was revised without notice and that too, after the lapse of more than 18 years. So, he prays for quashing Ext.P6 and for grant of appropriate reliefs.

3. The respondents have filed counter affidavit, in which it is stated that the petitioner was neither Ex-emergency commissioned or Ex-short Commissioned Officer in the Armed Force. Ext.P2 is meant for such officers. So, the petitioner is not entitled to the benefit of pay fixation under Ext.P2. It is also alleged that only on the mis-representation made by the petitioner, his pay happened to be fixed under Ext.P2 Rules.

4. The petitioner has filed a reply affidavit dealing with averments in the counter affidavit. He has also produced Ext.P10 document to show that he is a Commissioned Officer in the rank of a Captain.

5. Heard learned counsel on both sides.

6. Going by the document Ext.P10 produced by the petitioner, it does not show that the petitioner is an Ex-emergency commissioned or Ex-short Service Commissioned Officer. Therefore, Ext.P2 will not have any application. But, learned counsel for the petitioner pointed that the fixation of pay has been made by the competent authority. Without notice, and after the lapse of 18 years, the same is revised and excess payment is sought to be recovered. It is arbitrary and unreasonable, it is submitted.

7. There are a few decisions of this court in support of the contention raised by the petitioner. But recently, there are two division bench decisions, which took a different view. They are: (1) **State of Kerala v. Saiful Islam {2006(1) KLT 619}** and (2) **Union of India v. Roy {2005(2) KLT 63}**. Those decisions support the view that public money paid wrongly can be collected from the employees concerned, even if there is considerable delay.

Therefore, this writ petition fails and it is dismissed.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

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